

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5875 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BB DHANDHALIA

Versus

ADDL.COMMISSIONER HEALTH AND MEDICAL SERVICES

Appearance:

1. Special Civil Application No. 5875 of 1999
MR AS SUPEHIA for Petitioner No. 1
MR ND GOHIL ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr.A.S.Supehia on behalf
of the petitioner and learned AGP Mr.N.D.Gohil for
respondent - State Authority.

The facts of this case reflects that the petitioner was serving as Junior Clerk under the respondents and by order dated 13.3.1990 he was placed under suspension pending prosecution for offence under the Prevention of Corruption Act. The petitioner was thereafter acquitted by the learned Special Judge by the Judgment dated 13th August, 1997 and he has been reinstated in service by the order dated 3.2.1998 with effect from 13.8.1997. However, Appeal against acquittal has been preferred and the same has been admitted by this Court which is awaiting final disposal. But the grievance of the petitioner is that since reinstatement order has been passed by the Department, suspension is not being regularised by the respondents and the answer given by the respondents to the effect that so long the appeal against acquittal remains pending, suspension period cannot be regularised under Rule 152 of the Bombay Civil Services Rules. However, learned AGP Mr.N.D.Gohil has relied on the decision of the Division Bench of this Court reported in 2000 [2] GLR 1574 and contended that the Division Bench of this Court has interpreted Rule 152 of the B.C.S.R. and held that so long the acquittal appeal is pending, the employee is not entitled for regularisation of the suspension period.

Considering submissions made by the learned advocate Mr.Supehia and the learned AGP Mr.Gohil, so also the decision of the Division Bench of this Court, according to my opinion, suspension period pending appeal against acquittal cannot be regularised and therefore, the stand taken by the respondent is just and proper.

However, it is submission of the learned advocate Mr.Supehia that since the petitioner has been reinstated, the petitioner is entitled to other service benefits like annual increments, grant of subsistence allowance at the rate of revised pay scale from 1.1.1996 and salary from the period from 13th August, 1997 in revised pay scale and benefit of higher grade scale on completion of nine years if such higher grade benefit given to the juniors to the petitioner. Learned advocate Mr.Supehia for the petitioner, in support of his submission, has relied upon the decision of Division Bench of this Court in LPA No.39 / 1997 in Special Civil Application No.4170 / 1994 dated 10th February, 1998, wherein this Court has examined the provisions of Rule 151 of the B.C.S.R. and come to the conclusion that subsistence allowance is required to be paid in the revised pay scale as and when pay is revised by the State Government.

In above view of the matter, it is directed to the respondents to consider the case of the petitioner for annual increment from the date of reinstatement dated 13th August, 1997 and grant of revised subsistence allowance with effect from 1st January, 1996 and salary from 13th August, 1997 as well as claim of higher grade scale and to pass appropriate orders in accordance with law considering the fact that suspension order has already been revoked by the respondents and the petitioner has been reinstated in service but suspension period could not be regularised under Rule 152 of the B.C.S.R as per the decision of the Division Bench of this Court and therefore, other benefits should be given to the petitioner by the respondents, within two months from the date of receiving the copy of this order.

In view of above observations and directions, present petition stands disposed of accordingly.

Rule stands discharged with no order as to costs.

Date : 11.8.2003 [H.K.Rathod, J.]

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